



PROPOSED

**SECTION 106 TRIBAL CONTINUING GRANTS
PROGRAM**

APRIL 2001

**U.S. Environmental Protection Agency
Resources Management and Evaluation Staff
Office of Wastewater Management
1200 Pennsylvania Avenue. N.W.
Washington, D.C. 20460**

PROPOSED SECTION 106 TRIBAL CONTINUING GRANTS PROGRAM

PURPOSE: The Environmental Protection Agency (EPA) is proposing to develop a program to provide eligible Tribes the opportunity for a continuity of funding under Section 106 of the Clean Water Act (CWA). The purpose of this document is to describe the proposed program and to request feedback/input from American Indian Tribes.

A description of requested feedback/input can be found in [Attachment A](#).

Any decision to implement the proposed program will be done in consultation with Tribes.

BACKGROUND: Section 518(e) of the Clean Water Act (CWA) authorizes EPA to treat an Indian Tribe as a state for purposes of eligibility for financial assistance under Section 106. The “Treatment-as-a-State (TAS)” status recognizes that Tribes are sovereign nations with a unique legal status and relationship to the federal government, and that Tribes should assume a role in implementing the environmental statutes on Tribal land comparable to the role States play on State land.

A description of the Section 106 Tribal Grants Program can be found in [Attachment B](#).

One of the most common concerns expressed by Tribes regarding the Clean Water Act Section 106 Tribal Grants Program is inconsistent funding levels from year to year. Currently, individual Tribes do not receive allotments directly from EPA. The Section 106 Tribal Grants Program funds are allocated to the EPA Regions in accordance with the allotment formula adopted in Fiscal Year 1998. Each region has the discretion to award grants to eligible Tribes as it believes appropriate, consistent with statutory limitations, Agency regulations and guidance. Indian Tribes currently compete with each other for financial assistance under Section 106 and cannot rely on continuity of funding from year to year. This uncertainty in financial assistance makes long-term environmental planning difficult.

The Environmental Protection Agency (EPA) shares this concern and is proposing to develop a program to provide eligible Tribes the opportunity for a continuity of funding under Section 106. This continuity of funding will provide Tribes the opportunity to plan and conduct continuing environmental programs on Tribal lands.

PROPOSED PROGRAM: Under the proposed program, continuing program grants will be used to provide a continuity of funding for those Tribes with a documented water pollution control program, which includes documented water related environmental needs, environmental goals, priorities, and funding estimates. Grants may be awarded for budget periods of up to five years. Continuation awards will provide funding after the first award under a continuing program grant, provided that funds are appropriated and satisfactory progress is being made to address environmental needs and achieve environmental goals. A list of program-related eligibility parameters will be used to determine a Tribe’s qualifications to be considered for a continuing program grant. Section 106 project grants will continue to be available for Tribes who do not meet the eligibility requirements for, or who do not choose to apply for, a continuing program grant. The criteria proposed for a designation that a Tribe is implementing a continuing water program are outlined below.

CRITERIA FOR CONTINUING GRANTS PROGRAM

EPA convened a work group to develop a framework for the proposed continuing grants program. The work group met in Dallas, TX February 1-2, 2001, and consisted of representatives from EPA Headquarters, EPA Regions, the Hoopa Valley Tribe (Region 9), the Eastern Band of Cherokee Indians (Region 4), and the Wichita and Affiliated Tribes (Region 6).

A list of attendees can be found in [Attachment C](#).

The key meeting objectives were: 1) to develop and agree on a framework of proposed program-related eligibility parameters for continuing program grants; and 2) to adopt a plan and schedule for implementation of the continuing grants program.

MEETING OUTCOME SUMMARY: The workgroup meeting resulted in the following outcomes:

- ◆ The workgroup developed and agreed on a comprehensive list of proposed eligibility parameters for a Section 106 Continuing Grants Program.
- ◆ The workgroup identified the action steps and a schedule leading to a decision on implementation of a Section 106 Continuing Grants Program.

MEETING SUMMARY:

Day 1: Thursday, February 1

During a facilitated brainstorming session, a list of potential eligibility parameters for a Continuing Grants Program were categorized under five broad categories:

1. Documented Pollution Control Program with environmental goals, priorities, needs and funding estimates.
2. Demonstrated technical and administrative capability to manage a water pollution control program.
3. Demonstrated satisfactory performance under existing or previous grant awards.
4. Approved Quality Assurance Project Plan (QAPP)
5. Established program for water quality monitoring, data management and reporting.

After the parameters were initially grouped into the categories, the workgroup refined the category definitions and regrouped the parameters. The result is proposed criteria to determine eligibility for a continuing program grant under the Section 106 Tribal Grants Program:

Category I - Planning: A demonstrated ability to produce assessments and planning documents to guide the water program.

Documentation might include:

- QAPP
- Unified Watershed Assessment (UWA)
- Nonpoint Source (NPS) Assessment and Management Plan

- Groundwater Assessment Plan
- Wetland Protection Plan
- Source Water Protection Plan
- Water Quality Assessment Report (such as a §305(b) report);
- Wetland Conservation Plan
- Monitoring Plans
- Continuing Planning Process
- Tribal Environmental Agreements (Tier 2 or higher)
- Grant work plans with data quality objectives and budget
- Other court mandated initiatives
- Tribal Water Quality Standards
- Other natural resource planning documents; e.g. Integrated Resource Management Plan (IRMP)

Category II - Capability: Demonstrated ability to manage a water quality program.

Elements might include:

- Satisfactory performance under prior or existing grants;
- Monitoring programs and staff with ability to assess resulting data;
- Best Management Practices (BMPs) developed;
- In-house staff with water quality program experience, and/or proven ability to acquire skills and knowledge from external sources;
- Program continuity;
- Linkages with other entities.

Category III - Environmental Information Management and Reporting: Demonstrated ability to gather, assess and report information on water quality, as may be evidenced by:

- Preparation of adequate reports [CWA Section 305(b) or similar report on surface water quality]
- QAPP Implementation;
- Established database to manage water quality information (STORET or equivalent).

Additionally, the workgroup group determined that there are basic eligibility factors that must be met:

- Treatment as a State status
- Water Quality Program Plan - A multiple year work plan and budget for a water quality program.

The work group, including the Tribes, reached agreement that the three proposed categories, as well as the basic eligibility factors, would serve as the criteria to determine the eligibility of a Tribe to apply for a continuing program grant under the Section 106 Tribal Grants Program.

IMPLEMENTATION ISSUES

(to be addressed provided Tribal comments support the establishment of a Continuing Grant Program)

- ◆ A key concern involves how implementation of a Continuing Grants Program under the Section 106 Tribal Grants Program would impact the current funding levels of Tribal water programs. There was a great deal of discussion concerning how a funding scheme for a Continuing Grants Program would look:
 - How will the funding scheme be connected to the EPA budget cycle?
 - How would the funding targets be set?
 - How will finding targets impact funding levels for those Tribes programs that do not have continuing program grants?
- ◆ Feasibility of setting national funding targets for some Tribes, such as the Navajo Nation.
- ◆ It was emphasized that the decision of a Tribe to apply for, or of EPA to award, continuing program grant would be discretionary.

ACTIONS STEPS AND SCHEDULE

Reaching a decision on the implementation of a Section 106 Continuing Grants Program will involve the following actions:

<u>ACTION</u>	<u>SCHEDULE</u>
◆ EPA Regions consult with Tribes	May/June 2001
◆ Tribal comments to EPA Headquarters	July 15, 2001
◆ Consolidated Comments to Workgroup	July 30, 2001
◆ Workgroup meeting to discuss/resolve comments	August 15, 2001
◆ Final Report prepared, to include: <ul style="list-style-type: none">• Recommended Decision• Description of Continuing Grants Program• List of Commentors• Comments on Meeting Summary Report• Comment Response Summary	September 15, 2001
◆ Briefings on Final Report	September 2001
◆ Implementation Decision	October 15, 2001

- ◆ Based on a decision to implement a Section 106 Continuing Grants Program, Agency clearance process would need to be completed for:
 - Draft Program Guidance November 2001
 - Regulatory Revisions (as required) TBD
 - Congressional Review Act (CRA) Review November 2001
 - Federal Register Notice December 2001
- ◆ Final Program Guidance to Regions January 2002
- ◆ Funding Targets to Regions February 2002

Day 2: Friday February 2

The attending Tribes were provided an opportunity to present their Section 106 issues for group discussion.

- ◆ The Tribes presented the following issues for EPA consideration:
 - The Section 106 allocation formula uses 1990 Census data and should be updated, using 2000 Census data.
 - Water data used in the allocation formula should consider more than water area, such as cultural uses and Endangered Species Act issues.
 - Should Unified Watershed Assessments data be utilized in the formula?
 - Section 106 funds need to get to the Region in a timely manner. Grants need to be on time to meet Tribal funding needs.

ATTACHMENT A

FEEDBACK/INPUT REQUESTED

Any decision to implement the proposed Continuing Grants Program will be done in consultation with Tribes. EPA is seeking feedback/input from all Tribes on the proposed program presented above. In particular EPA would like to have Tribes' views on:

- Is the current process for setting 106 grant amounts causing difficulties in terms of planning and implementing Tribal water programs?
- Is the idea of setting funding targets a good one?
- Is the idea of setting criteria for a "Continuing Water Program" a good approach?
- Are the criteria presented above valid criteria for assessing if a Tribe has a continuing water program?

Submit comments to your EPA Regional Office. Regional staff will then compile the comments from the Tribes in their area, and send a consolidated package into EPA Headquarters. EPA will review and consider all comments received, and will develop a summary of the comments received that will be part of the decision-making package, as it moves toward a determination as to whether the approach described in this consultation document should be implemented.

Questions

If you have any questions regarding the proposal summarized herein, please contact your Regional water program staff, or you may call or e-mail to Clarence Braddock (braddock.clarence@epa.gov).

Thank you for taking time to consider this proposal and providing your feedback/input.

ATTACHMENT B

CLEAN WATER ACT SECTION 106 TRIBAL GRANTS PROGRAM

PROGRAM ELIGIBILITIES

INDIAN TRIBE

Section 518(e) of the Clean Water Act (CWA) authorizes EPA to treat an Indian tribe as a state for purposes eligibility for financial assistance under Section 106. The “Treatment-as-a-State (TAS)” status recognizes that Tribes are sovereign nations with a unique legal status and relationship to the federal government, and that Tribes should assume a role in implementing the environmental statutes on Tribal land comparable to the role States play on State land.

Under the requirements of Section 518(e) of the Clean Water Act (CWA), EPA may make a determination that a Tribe is eligible for financial assistance under Section 106, but only if:

1. The Tribe is designated as a Federally recognized Tribe by the Secretary of the Department of Interior.
2. The Tribe has a governing body carrying out substantial governmental duties and powers.
3. The Tribe has functions to be exercised that pertain to the management and protection of water resources which are held by the Indian Tribe, held by the United States in trust for Indians, or otherwise within the borders of the Indian reservation.
4. The Tribe is reasonably expected to be capable, in the Regional Administrator’s judgment, of carrying out the functions to be exercised in a manner consistent with the statutory and regulatory requirements of the Section 106 Grant Program.

INTERTRIBAL CONSORTIUM

An Intertribal Consortium is a partnership between two or more Tribes that is authorized by the governing bodies of those Tribes to apply for and receive financial assistance under Section 106. EPA may make a determination that a Consortium is eligible to receive financial assistance under Section 106 if the Consortium demonstrates that each of the member Tribes authorizing the Consortium to act on its behalf has met the requirements for TAS.

PROGRAM FUNDING

A portion of the total funds appropriated for grants under Section 106 is set-aside to fund Tribal water pollution control programs. Individual Tribes do not receive allotments directly from EPA. The set-aside funds are allocated to the EPA Regions in accordance with the Tribal allotment formula adopted in Fiscal Year 1998. Each region has the discretion to award grants to eligible Tribes as it believes appropriate, consistent with statutory limitations, agency regulations and guidance.

PROGRAM ACTIVITIES

Section 106 grants may be used to fund a wide range of water pollution control activities including: water quality planning and assessments; development of water quality standards; ambient monitoring; development of total maximum daily loads; permit issuance; ground water and wetland protection; and nonpoint source control activities (including nonpoint source assessment and management plans). Section 106 grant funds are eligible for inclusion in a Performance Partnership Grant (PPG) in which an eligible Tribe or Intertribal Consortium may choose to combine funds from two or more environmental program grants into a single grant with a single budget.

PROGRAM COST SHARING

The Regional Administrator may provide up to 95 % of the approved eligible work plan costs for a Section 106 grant award to an eligible Tribe or Intertribal Consortium. Eligible work plan costs for Section 106 grant awards include costs of planning, developing, establishing, improving, or maintaining a water pollution control program.

Regional Administrators may increase the maximum federal share if the Tribe or Intertribal Consortium can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe, or within each Tribe that is a member of an Intertribal Consortium, are constrained to such an extent that fulfilling the 5% match requirement (either matching funds or in-kind contributions) would impose undue hardship.

PERFORMANCE EVALUATION

Each Region will oversee the performance of Tribes under Section 106 grant agreements. Regional project officers will: (1) evaluate each recipient's performance and progress toward completing the commitments in the negotiated grant work plan in accordance with the work plan schedule; (2) provide the findings of the evaluation to each grant recipient; and (3) include the findings in each grant recipient's file. The grant applicant and the Regional Administrator will develop a joint process for evaluating progress and accomplishments under the Section 106 grant agreement work plan. The evaluation process must provide for:

- a discussion of accomplishments against work plan commitments
- a discussion of the cumulative effectiveness of the work performed under each of the work plan components
- a discussion of existing and potential problem areas
- suggestions for improvement, including, where feasible, schedules for making improvements.
- identification of water quality problems specific to the Indian reservation.

PROGRESS REPORTING

Each Region should provide for a mid-year and end-of-year review and evaluation of the grant recipient performance under the Section 106 grant agreement, with a written end-of-year evaluation report provided to the grant recipient and the Office of Wastewater Management (OWM). The report should highlight the successes and/or problems the Tribe or Intertribal Consortium has encountered in meeting its grant agreement work plan commitments, as well as specify any technical assistance required to resolve identified problems. Activities that have been undertaken to develop or continue/accelerate monitoring programs should be addressed separately in the year-end report as well. This information will assist in managing the national program.

ATTACHMENT C

SECTION 106 TRIBAL GRANTS PROGRAM WORKGROUP MEETING

February 1- February 2, 2001

Dallas, Texas

LIST OF ATTENDEES

<u>NAME</u>	<u>REPRESENTING</u>
Dan Cozza	EPA Region 5
Bob Newport	EPA Region 5
Rob Van Brunt	EPA Headquarters
Clarence Braddock	EPA Headquarters
Steffanie Crossland	EPA Region 6
Alan Moomaw	EPA Region 10
Sadie Hoskie	EPA Region 8
Cherise Maples	Eastern Band of Cherokee
Calvin Murphy	Eastern Band of Cherokee
Ira French	Wichita and Affiliated Tribes
Lashon Blakely	EPA Region 4
Eve Zimmerman	EPA Region 4
Wendell Smith	EPA Region 9
Robert Ulibarri	Hoopa Valley Tribe